

WORK SESSION #1
LD 1798 An Act to Reform Land Use Planning in the Unorganized Territory
February 23, 2012

Background: LD 1798 contains statutory changes necessary to implement the recommendations of the Commission on Reform of the Governance of Land Use Planning in the Unorganized Territory pursuant to Resolve 2011, chapter 113.

Resolve 2011, chapter 113 directed the LURC Reform Commission to:

1. Consider reforming the governance of land use planning in the unorganized territory and make recommendations on the role of state agencies and county government, the planning and appeals process and opportunities for increased self-determination in land use planning in the unorganized territory;
2. Ensure that any recommendation that entails the elimination of the Maine Land Use Regulation Commission, referred to in this resolve as "LURC," provides an effective transition process, including a plan for LURC to complete any pending work or transfer the work to relevant agencies;
3. Ensure uniform standards across the unorganized territory for timber harvesting activities and forest management, wildlife habitat protection and issues under the jurisdiction of the Natural Resources Protection Act; and
4. Consider options for reforming the governance of land use planning in the unorganized territory

Snapshot of LURC Jurisdiction:

Land base:

10.4 million acres

9,290,212 acres in the unorganized territory of which 7,531,333 acres enrolled in Tree Growth Tax Program

1.1 million acres comprised of 32 plantations and 8 municipalities

Population:

12,000+	residents living within LURC jurisdiction
7,902	of the 12,000 are full-time residents in the 420 UT townships ¹

Census data estimates another 26, 895 people occupy 11,068 seasonal structures in the UT¹.

Property ownership: Diverse (more detail available for the next work session)

¹ Unorganized Territory Fiscal Year 2010 Annual Report, p. 7 primary source 2010 U.S. Census Data

I. Role of Other State Agencies

- A. Timber harvesting and forest management: LD 1798 proposes transferring responsibility for regulation of timber harvesting and forest management within LURC jurisdiction to the Bureau of Forestry (a.k.a. Maine Forest Service or MFS) within the Department of Conservation. LD 1739 proposes a similar transfer. LD 1798 has been voted Ought to Pass as Amended by the ACF committee. Language is being developed regarding regulation of activities in flood plains and compliance with the Natural Resource Protection Act (NRPA.) *Sec. 15 of LD 1798*
- B. Wind energy development: LD 1798 proposes transferring responsibility for permitting grid-scale wind energy development in the expedited areas of LURC jurisdiction to the Department of Environmental Protection. Clarification may be needed if the intent is for DEP to assume permitting of all wind energy development in LURC jurisdiction. Does LURC need to rezone or affirm that the project is a permitted use in areas that have not been designated as expedited areas? *Sec. 16,20,25,28 & 32*
- C. Site Law of Development Act (site law): LD 1798 provides for all projects reaching the threshold for review under site law to be reviewed by DEP rather than LURC except for projects proposed within planned subdistricts. *Sec. 33, 34, 35 & 37*

II. Increased self-determination in land use planning in the unorganized territory;

- A. Regional comprehensive land use plans: LD 1798 enacts a provision by which a county or counties may request assistance from the LUPC to develop and implement a regional CLUP and associated zoning within LUPC's jurisdiction. The proposed §685-C, sub-§1-A requires the commission to engage in certain activities if they provide assistance. LD 1798 does not state that LUPC must provide assistance if requested. Is the intent that the commission has discretion to provide assistance depending on resources available or other factors related to the request? Does the process established in Sec. 24 of LD 1798 approximate the process by which the Prospective Zoning Plan for the Rangeley Lakes Region was developed? *Sec. 24*

III. Training and location of meetings and staff; certain permitting delegated

- A. Offices and meetings: LD 1798 requires field office to be located close to or in the jurisdiction. *Sec. 9* LD 1798 requires LUPC meetings to be held within the jurisdiction or in a convenient location approved by the Chair of LUPC. *Sec. 8*
- B. Training: LD 1798 requires LURC employees to receive regular training in customer service and other areas. *Sec. 9* LD 1798 requires commission members to receive an orientation and annual continuing education on LUPC statutes, rules and planning and regulatory processes. *Sec. 8*

- C. Delegation of certain permitting functions to counties: LD 1798 authorizes the LUPC to delegate certain permitting and enforcement activities to a county upon receiving a request from county commissioners for such delegation. A person aggrieved by a decision of the county could ask LUPC to review the county's decision. *Sec. 19*

IV. Transition process; continuity for landowners with approved concept plans

- A. Planned subdistricts: LD 1798 defines "planned subdistricts" and uses that term to identify areas where development will continue to be reviewed and permitted by LUPC. Review of proposed projects in these areas would not be transferred to DEP for review under site law. The intent is for the term "planned subdistricts" to capture the 14 existing areas for which LURC has approved zoning petitions in agreement with the landowners. These 14 areas are designated as either "resource plans" or "concept plans." Some of these plans have expiration dates. If LUPC continues to accept and approve similar zoning petitions, landowners will want to discuss the ramifications of such a designation. *Sec. 5, 10, 17, & 34*
- B. Transition provisions: LD 1798 contains standard transition language to transfer authority from LURC to the newly formed LUPC. It also contains language regarding the transfer of records to DEP, and the continuance of rules and permits in effect until "rescinded, revised or amended by the proper authority." LD 1798 contains effective dates and dates by which rules must be adopted. The agencies involved will want to review these dates carefully and advise ACF on their ability to assume responsibilities by these dates. *Sec. 36, 37 & 38*

V. Accountability

- A. Comprehensive Land Use Plan (CLUP): LD 1798 requires LUPC to submit the tentative CLUP to the legislative committee of oversight and for the committee to review the plan at a public meeting. It requires approval by the Legislature prior to final adoption. *Sec. 23*
- B. Performance report: LD 1798 requires LUPC to submit an annual report to the legislative committee of jurisdiction beginning in 2013. The report must be presented at a public meeting of the legislative committee and members of the public must be given an opportunity at the meeting to comment at LUPC performance. Required components of the report are listed in § 685-H; these include statistics and summaries of activities and goals for the next year. *Sec. 27*

VI. Land use districts

- A. Classification of land use districts: LD 1798 amends the statutory standard for designating an area as a "development district." It strikes the standard that development districts be areas that are "discernible as having patterns of intensive" uses and replaces it with the standard that the areas are "appropriate for" those uses.

LD 1798 also clarifies LUPC's authority to designate planned subdistricts with standards unique to that area. *Sec. 10*

- B. Land use district boundaries: LD 1798 strikes the language that prohibits a change in a land use district boundary unless the proposed land use district "satisfies a demonstrated need in the community or area." *Sec. 14*

VII. Rulemaking authority

- A. LURC's rulemaking authority: LURC's rulemaking authority predates the required designation of rules as either major substantive or routine technical. This required designation began January 1, 1996. Rulemaking authority prior to that date is, in effect, "grandfathered" as routine technical. When a section or chapter of law with "grandfathered" rulemaking authority is amended, the drafting standard is to designate those rules as routine technical. LD 1798 follows this convention. Sec. 7 grants rulemaking authority to the new LUPC reading "Unless otherwise provided in this chapter, rules adopted by the commission under this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A." (page 4, lines 1-3)
- B. Rules not designated as routine technical: The statutory provision governing LURC's adoption or amendment of land use district standards, district boundaries and land use maps is unusual, if not unique, in Maine statutes. § 685-A, sub-§ 7-A, ¶B allows the commission to adopt or amend the land use district standards but requires the commission to submit the standards to the next session of the Legislature for approval or modification. There is, however, no formalized process for approval as with rules designated as major substantive rules. LD 1798 does not amend sub-§ 7-A. The text of that subsection is provided on the attached yellow sheet.
- C. Rules designated as major substantive: LURC is directed to establish a schedule of fees through rulemaking. This authority was amended in 2005 to specify that amendments to the fee schedule after October 1, 2005 are major substantive rules.
- D. Rulemaking during transition period: LD 1798 includes transition provisions that maintain LURC's existing rules in effect until they are rescinded. Revised or amended by the proper authority. (*Sec. 38, sub-3*) DEP is directed to adopt rules necessary to review development applications in LUPC jurisdiction under site law. The transitions provision states that rules adopted for this purpose must be in effect no later than January 1, 2013 and are routine technical rules. Subsequent revisions to those rules are designated as major substantive under 38 MRSA §489-E.

Comparison of Current LURC Membership and Membership Proposed in LD 1798

LD 1798	Current Law: 12 MRSA §683
<p>Membership: 9 members</p> <p>3 members appointed by the Governor and subject to review by the committee of jurisdiction and confirmation by the Legislature</p> <p>6 members – 1 representing each of the 6 counties with the most acreage in the unorganized and deorganized areas.</p>	<p>Membership: 7 members</p> <p>All 7 members appointed by the Governor and subject to review by the committee of jurisdiction and confirmation by the Legislature</p>
<p>Qualifications for 3 Gubernatorial appointees:</p> <p>A. Must be familiar with the needs and issues affecting the commission's jurisdiction; and</p> <p>B. Must meet <u>one</u> or more of the following conditions:</p> <ol style="list-style-type: none"> 1. reside in the commission's jurisdiction; 2. work in the commission's jurisdiction; 3. be a former resident; 4. be retired after working within the commission's jurisdiction for a minimum of 5 years; or 5. have expertise in commerce and industry, fisheries and wildlife, forestry or conservation issues as they affect the commission's jurisdiction. 	<p>Qualifications for 7 Gubernatorial appointees:</p> <p>A. Must be familiar with the needs and issues affecting the commission's jurisdiction; and</p> <p>B. Must meet <u>one</u> or more of the following conditions:</p> <ol style="list-style-type: none"> 1. reside in the commission's jurisdiction; 2. work in the commission's jurisdiction; 3. be a former resident; 4. be retired after working within the commission's jurisdiction for a minimum of 5 years; or 5. have expertise in commerce and industry, fisheries and wildlife, forestry or conservation issues as they affect the commission's jurisdiction. <p>At least 3 members must be residents within the commission's jurisdiction.</p>
<p>Other considerations in making appointments:</p> <p>The Governor shall actively seek and give consideration to persons residing in or near the unorganized areas of the State and to persons residing on unorganized coastal islands.</p> <p>A county commissioner, county employee, municipal official or municipal employee is not considered to hold an incompatible office for purposes of simultaneous service on the commission.</p>	<p>Other considerations in making appointments:</p> <p>The Governor shall actively seek and give consideration to persons residing in or near the unorganized areas of the State and to persons residing on unorganized coastal islands.</p> <p>A county commissioner, county employee, municipal official or municipal employee is not considered to hold an incompatible office for purposes of simultaneous service on the commission.</p>

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TITLE 12

CHAPTER 206-A

SUBCHAPTER 2: MAINE LAND USE REGULATION COMMISSION

Selected Sections Only

§685-A Land use districts and standards – *Selected subsection only*

7-A. Procedure for adoption or amendment of land use district standards, district boundaries and land use maps. This subsection governs procedures for the establishment and amendment of land use district standards and boundaries and the amendment of the commission's land use maps.

A. The commission or its staff may initiate and any state or federal agency, any county or municipal governing body or any property owner or lessee may petition for adoption or amendment of land use district standards, district boundaries or land use maps.

B. Adoption and amendment of land use district standards, district boundaries and land use maps are rule-making procedures subject to the requirements of Title 5, chapter 375, subchapter II, except that the requirements of Title 5, section 8052, subsections 5, 5-A and 7; section 8053-A; section 8056, subsections 1, 3 and 4; section 8056-A; section 8057, subsection 2; section 8057-A; section 8060; section 8062; and section 8064 do not apply. The requirements of Title 5, chapter 375, subchapter II are further modified by the following provisions.

(1) Public notice of proposals to adopt or amend land use district standards, district boundaries or land use maps must state the time and the place where copies of the proposal may be inspected prior to the hearing.

(2) The commission shall give notice of hearings to amend district boundaries, by mail, to appropriate state and federal agencies and the owners of directly affected and abutting properties, according to their names and addresses as shown on the records of Maine Revenue Services or plantation or town tax assessors. If the number of owners of directly affected and abutting properties is more than 50, notice may instead be by publication conforming to the requirements for newspaper publication of hearings under Title 5, chapter 375, subchapter IV.

(3) At any time prior to the date of adoption of proposed land use district standards, land use boundaries or land use maps, the commission may elect to reopen the public hearing record and extend the time period for public comment to such date as it may designate.

(4) The commission must act to adopt or not to adopt proposed land use district standards, land use boundaries or land use maps within 90 days after the date of final closure of the public hearing.

(5) Land use district boundaries and land use maps become effective 15 days after adoption or amendment by the commission, as long as the boundaries and maps are

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available in the appropriate registry of deeds for each county. Notice of adoption or amendment of land use district boundaries and land use maps must be given by publication one time in a newspaper of general circulation published in the area affected.

(6) Permanent land use standards adopted by the commission are effective immediately, but must be submitted to the next regular or special session of the Legislature for approval or modification. If the Legislature fails to act, those standards continue in full force and effect.

§685-C. Miscellaneous provisions – *Selected Subsection Only*

3. Schedule of fees. The commission shall adopt rules in accordance with Title 5, chapter 375, subchapter 2 to establish a schedule of reasonable fees for the administration of this chapter. Amendments to those rules adopted after October 1, 2005 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

No approval, certificate, special exception or variance may be issued unless or until such fees established by the commission have been paid in full, nor may any action be taken on proceedings before the commission unless or until preliminary fees have been paid in full.

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